

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)
)
Amendment of Section 73.202(b))
FM Table of Allotments,) MB Docket No. 04-431
FM Broadcast Stations.) RM-11115
(Hermitage, Arkansas))

NOTICE OF PROPOSED RULEMAKING**Adopted: December 8, 2004****Released: December 10, 2004****Comments Date: January 31, 2005****Reply comments Date: February 15, 2005**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by Charles Crawford ("Petitioner") proposing the allotment of Channel 300A at Hermitage, Arkansas, as the community's first local aural transmission service. Petitioner states his intention to apply for the channel, if allotted.

2. In support of his proposal, Petitioner states that Hermitage is an incorporated city with a 2000 U.S. Census population of 769 persons. Hermitage has its own mayor, post office, fire department, police department, city offices, library, school system, and a number of local churches. Petitioner further states that Hermitage is deserving of a local FM service because it would provide additional diversity and an outlet for local self-expression to its residents.

3. We believe the proposal warrants consideration because the allotment of Channel 300A could provide Hermitage with its first local aural transmission service. An engineering analysis has determined that Channel 300A can be allotted to Hermitage in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) east to avoid a short-spacing to the construction permit site for Station KLAL(FM), Channel 299C1, Wrightsville, Arkansas. The coordinates for Channel 300A at Hermitage are 33-25-00 North Latitude and 92-04-30 West Longitude.¹

4. According, we seek comment on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 73.202(b), for the community listed below, to read as follows:

¹ The proposed allotment of Channel 300A at Hermitage is short-spaced to the licensed site for Station KVMA-FM, Channel 300C2, Magnolia, Arkansas. In MB Docket No. 02-199, Channel 300C2 was reallocated from Magnolia, Arkansas to Oil City, Louisiana by *Report and Order*. See *Magnolia, Arkansas and Oil City, Louisiana*, 18 FCC Rcd 8542 (MB 2003). A *Memorandum Opinion and Order* was adopted on January 29, 2004, denying a Petition for Reconsideration and Motion for Stay filed by Access.1 Communications-Shreveport, LLC. See 19 FCC Rcd 1553 (MB 2004). On March 25, 2004, an Application for Review was filed, which is pending. We caution parties that although Channel 300C2 was reallocated from Magnolia, Arkansas to Oil City Louisiana, the instant proposal will be granted subject to the outcome of MB Docket No. 02-199, since the Magnolia, Arkansas proceeding is effective but not yet final. See *Auburn, Alabama, et al.*, 18 FCC Rcd 10333 (MB 2003).

Channel No.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Hermitage, Arkansas	----	300A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

6. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before January 31, 2005, and reply comments on or before February 15, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner as follows:

Charles Crawford
4553 Bordeaux Ave.
Dallas, Texas 75205

7. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.² This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).³

9. For further information concerning this proceeding, contact Sharon P. McDonald, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of*

² See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend C.F.R. Sections 73.202(b), 73.504 and 73.606(b)*. 46 FR 11549 (February 9, 1981).

³ 44 U.S.C. Section 3506(c)(4).

Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioners constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.